

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION

- - - - - x  
:  
UNITED STATES OF AMERICA, :  
:  
v. : Criminal No. JKB10-4761  
:  
ANTONIO MARTINEZ, a/k/a :  
MUHAMMAD HUSSAIN :  
:  
Defendant. : Baltimore, Maryland  
- - - - - x December 13, 2010

**HEARING**

BEFORE: THE HONORABLE SUSAN K. GAUVEY, Judge

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On Behalf of the Government  
  
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Keynote: "---" indicates inaudible in transcript.  
"\*" indicates phonetic spelling in transcript.

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1                                   P R O C E E D I N G S

2                   MR. BALTER: We are going forward with the hearing.

3                   THE COURT: All right. Ms. Manuelian?

4                   MS. MANUELIAN: Yes, Your Honor. The Government is  
5 going to proceed by proffer. I understand that the --

6                   MR. BALTER: Excuse me, Your Honor, if I could just  
7 expedite matters in case the Court is going to viewing this  
8 matter in a different way. There has -- I have requested of  
9 the Government that they provide or have present in the  
10 courtroom the case agent in this case, Agent Bender. Who is --  
11 not the case agent but the --- to the support for the complaint  
12 in front of the Court.

13                   And I have advised the Government as well that I  
14 intended to request of the Court that the Court make a ruling  
15 that the Government proceed by testimony rather than by  
16 proffer. And just briefly, to explain my reasons for that,  
17 Your Honor, I think it is well established within the district  
18 that the Court does have the discretion to require the  
19 Government to proceed by proffer in the event that there is  
20 specific factual issues that would make it incumbent upon the  
21 Government to provide the type of more detailed testimony  
22 subject to cross examination that may not be provided in the  
23 affidavit.

24                   And from my understanding of this case and the  
25 review mainly just of the affidavit, I think this is clearly

1 one of those types of situations. What we have here is the  
2 Government's sting operation. There can be no question other  
3 than the fact that the Government induced the defendant, Mr.  
4 Martinez as I would have the Court note, he prefers to be  
5 referred to as Muhammad Hussain but they induced him to be  
6 involved in an act which was clearly the design of the  
7 Government.

8           The Government put into effect a series of events  
9 which lead to this fake bombing of the Army Recruitment Center.  
10 The way in which this whole matter began has to do -- was  
11 apparently contacts between Mr. Hussain and an undercover  
12 informant. The undercover informant supposedly after viewing I  
13 believe, it was two Facebook postings, went to the Government  
14 and indicated some level of concern or some level of -- for  
15 some reason felt it was incumbent upon him to let the  
16 Government know about information contained on the postings.

17           Following that the -- he -- apparently the  
18 Government sent Mr. -- sent the informant back to have further  
19 meetings with Mr. Hussain, several meetings that apparently  
20 were not reported, unlike these subsequent meetings and it was  
21 only after that, that a more concerted effort to follow through  
22 on this -- on this investigation which lead to this ruse of a  
23 fake bombing.

24           Now I think, Your Honor, that the Court must be in  
25 considering the weight to be given to the Government's evidence

1 must consider very carefully what occurred at the initial  
2 stages of this investigation. First of all, I think it is very  
3 significant the fact that this affidavit unlike most  
4 affidavits, makes no allegations whatsoever with regard to the  
5 background or the reliability of the informant.

6           That in every case in which there is Government  
7 inducement, in which there is Government activity related to  
8 the criminal activity itself is essential to knowing -- there  
9 being nothing in this affidavit with regard to that, I think it  
10 is essential that the defense -- that there be a more -- that  
11 there be testimony that would make it clear exactly what the  
12 background and the incentives and the benefits that went to  
13 this informant would have been.

14           The second part, Your Honor, is that the critical  
15 communications in this case appear to be in regard to the  
16 initial discussions between the informant and Mr. Hussain which  
17 in which there was supposedly the question as an attack on a  
18 military recruitment center was broached for the first time.  
19 And as I indicated, there are apparently three early  
20 conversations, following the initial report by the informant to  
21 the Government that were not recorded and it is the context, it  
22 is the specifics, it is very fact that went into these  
23 particular communications which is we believe, the most  
24 critical matter for this Court to be considering.

25           And without --

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1 THE COURT: Let me have you stop a minute, Mr.  
2 Balter because I am obviously not as familiar as you are with  
3 this case. I am looking at page 3 of the complaint and the  
4 complaint is not sealed and in paragraph 8, they talk about  
5 October 22nd, that as they call him "Mr. Martinez approached  
6 the CHS about attacking an Army Recruiting Center."

7 You are saying prior to that time, there had been  
8 these unrecorded conversations?

9 MR. BALTER: No my -- my inference, if you look at  
10 page 4, paragraph 9, Your Honor. On October 29, the informant  
11 engaged in the first of many recorded conversations. I infer  
12 from that, that the conversations that proceeded the 29th were  
13 unrecorded. So that would mean that they were unrecorded, if  
14 you look at page 3 again, there were unreported conversations  
15 on October 22nd and that again, if you just quick review of  
16 that shows that there was supposedly the first statements with  
17 regards -- first conversations about attacking the recruitment  
18 center.

19 THE COURT: Right.

20 MR. BALTER: Then subsequent to that, on October 25,  
21 there was a -- it says, "A brief unrecorded meeting at a gas  
22 station" in which there was more discussion about attacking the  
23 military installations and finally on October 28, there was  
24 another unrecorded conversation. Now if you look again, Your  
25 Honor, at paragraph 5 and 6 -- starting with paragraph 5 on

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1 page 3, what the informant is bringing to the Government was  
2 two postings on the internet, on the Facebook on September 29th  
3 and October 1st.

4 In which there is obviously nothing specific with  
5 regard to any type of plans for attack, I would submit that  
6 that is protected First Amendment speech, which is making no  
7 threat against anybody. It is -- it has a political and a  
8 religious content to it, but certainly there is nothing which  
9 would -- we would lead one to believe that there is any kind of  
10 impending attack on anything.

11 And it is from that supposedly that the informant  
12 goes to the authorities, and thereafter is apparently  
13 dispatched to continue to engage in conversations with  
14 Mr. Hussain. That certainly begs much further inquiry as to  
15 what the nature of that pre-existing relationship is between  
16 the informant issues with regard to the reliability of the  
17 informant and thereafter what the circumstances of these  
18 conversations with -- the three conversations on the 22nd, the  
19 25th and the 28th.

20 THE COURT: Yes, I understand your point, Mr. Balter  
21 is there was no recorded conversation -- unrecorded  
22 conversations that dealt with these kinds of actions. And  
23 there was the first recorded conversations when the first  
24 specific conduct is really discussed. And so I appreciate that  
25 something that you and your office are going to look at very

1 carefully but to me it doesn't undermine the rest of the  
2 affidavit in terms of the continued actions.

3 I certainly understand your argument but I don't  
4 think it requires the presence of the CHS to be here.

5 MR. BALTER: Well, first of all, Your Honor, I  
6 didn't ask for the presence of the informant at this point. I  
7 frankly think that that is the way that we should proceed. All  
8 I ask for is the presence of the offiant. And the reason why I  
9 think that this is essential for the Court's assessment of the  
10 issue of the strength of the Government's case is that they are  
11 clearly on the face of this -- of these charges is a very  
12 legitimate issue with regard to whether or not the Government  
13 entrapped Mr. Hussain.

14 THE COURT: And I appreciate that that is an air of  
15 defense that is going to be vigorously prosecuted and  
16 investigated by your office. I don't think at this point that  
17 it is necessary to have the offiant here. For that period of  
18 time, the lead up to the first recorded conversations and your  
19 argument -- your developing argument about entrapment.

20 So I understand the critical nature of that time  
21 period but at this point, I don't think it requires me to have  
22 that offiant here in person.

23 MR. BALTER: Thank you, Your Honor.

24 THE COURT: Yes?

25 MS. MANUELIAN: Your Honor, obviously the Court has



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1 had the opportunity I understand to see and read the complaint.

2 THE COURT: Yes.

3 MS. MANUELIAN: And I just want to add some  
4 information to that. Specifically with respect to what  
5 actually occurred on the day that the attempt was made. And I  
6 do want to make one correction to something that Mr. Balter  
7 pointed out. I think it is critical that the Court remember as  
8 outlined on page 3 of the criminal complaint that there were --  
9 in addition to the public postings on September 29, in which  
10 Mr. -- in which the defendant is talking about essentially the  
11 reign of oppression ceasing and laying out a threat with  
12 respect to that and talking about how he hates those who oppose  
13 Allah.

14 The other two communications that we have are  
15 specific statements that he made on October 10 and October 14  
16 to the CHS in a Facebook conversation, which we have the  
17 transcripts of those, especially the one on October 14, where  
18 he talks about his dream to be among the ranks of the --- to be  
19 a warrior and that he hoped that Allah would open a door for  
20 him because all he thinks about is Jihad.

21 These statements leading up to the initial  
22 conversation on October 22, obviously are very supportive of  
23 what he then goes forward to say to the confidential informant  
24 on the 22nd about identifying a particular target, that being  
25 the military and then what he elaborates on to a great extent

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1 throughout all of the recorded conversations that the Court can  
2 see in the remainder of the complaint affidavit. Not only to  
3 the confidential informant but also to the undercover agent in  
4 this case.

5           So what I want to do first is to just highlight a  
6 little bit more with some more specificity, some of the events  
7 that occurred that are recorded and on video tape on December 8  
8 when the defendant attempted to detonate this bomb. He  
9 initially met as I think we say in the affidavit or said in  
10 the affidavit, in a public parking lot where he was going to  
11 meet with both the confidential source and the undercover  
12 agent.

13           Prior to the undercover agent arriving, we have the  
14 defendant on tape talking to the CHS and giving him  
15 instructions about what to do if in fact the defendant gets  
16 caught. And basically said, "If a cop tries to stop me I will  
17 keep driving and you see that there is no way out, go ahead and  
18 press the button." Meaning, make the phone call or phone calls  
19 that were ultimately going to detonate the bomb.

20           Basically telling the CHS that there is no way out,  
21 I want you to do what I was going to do. He said, "I will try  
22 to run but I have been around and I know that cops will keep  
23 chasing me, so if I stop and run, go ahead and press the  
24 button." That is part of the recorded conversation leading up  
25 to when the undercover agent actually arrives at the public

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1 parking lot to provide the keys to the SUV that contained the  
2 vehicle bomb.

3           The defendant also during this lead into what  
4 occurred that day told the CHS, "Did you read your Facebook  
5 account? I left a message for you. I didn't know how you were  
6 feeling" because prior to this, the CHS had expressed some  
7 reservations about whether this was something that the -- not  
8 only the defendant wanted to do but whether this was something  
9 that he wanted to join the defendant with.

10           During one of those conversations, it was the  
11 defendant and I think it is cited in the complaint who said,  
12 Hey I brought you into this or I came to you about this  
13 brother. Meaning, it was the defendant who actually brought  
14 the informant --

15           THE COURT: Where is that specifically?

16           MS. MANUELIAN: In the complaint, Your Honor, I  
17 believe that that is -- if you could just give me a moment.

18           (Pause.)

19           MS. MANUELIAN: Here it is, on page 16, paragraph  
20 35. It was a conversation on December 4 and the informant was  
21 asking the defendant how he was feeling about all of this.

22           THE COURT: I see it now, thank you. Thank you.

23           MS. MANUELIAN: Anyway, the message and I have a  
24 copy of this that I will provide also to Mr. Balter. The  
25 message that was sent to the confidential informant's Facebook

1 account by the defendant was essentially the following. "In  
2 the name of Allah" it was sent on December 7, at 6:11 p.m.

3 (Whereupon, portions of the message were read into  
4 the record.)

5 "In the name of Allah, most gracious, most merciful,  
6 praise be to him and may he send peace and blessings  
7 to our beloved prophet, Muhammad who is Sahaba\* and  
8 family. Al humdudillah\*, my beloved brother  
9 Allatahla\* has chosen us for implementation of his  
10 deed and I am proud of sharing this time with you  
11 because this is a lifelong journey. A journey that  
12 will require patience, sincerity, unity and most  
13 importantly the reliance on Allah. Oh my beloved  
14 brother, I love you for the sake of Allah, you are  
15 of me and I am of you and with the help of Allah, we  
16 will be victorious in ---, may he accept us Amein."

17 (Whereupon, the reading of the message ended.)

18 MS. MANUELIAN: Obviously, reflecting the mind set  
19 that he was --

20 THE COURT: What was the word after victorious?  
21 Will be victorious?

22 MS. MANUELIAN: Ishalla --

23 THE COURT: Ishalla, God willing.

24 MS. MANUELIAN: May he accept us, Amein. That was  
25 the Facebook message that he was referring to when he met the

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1 informant on December 8. He also specifically mentioned that  
2 the UC should be the one to go on into the recruitment center,  
3 so while he was parking the SUV, so he could know for certain  
4 who was in there. There had been some discussion about that  
5 being done, when he confirmed to the CHS at the time they were  
6 having this conversation, that that is the way it really should  
7 go.

8           And he said, "I just want it to go smooth." The UC  
9 arrived on the scene, exchanged -- they went through the  
10 instructions again about exactly how the bomb should be  
11 detonated. And then he gave the keys to the SUV to the  
12 defendant. At that point in time, the undercover agent went to  
13 his vehicle. The CHS was remaining in his vehicle and on  
14 camera we see and on video tapes, all of which obviously will  
15 be provided at a later date to Mr. Balter in discovery.

16           We see the defendant go to the back of the SUV, open  
17 it up. Actually arm the device which he had to hook up some  
18 wires and he also had to trip the switch to actually arm the  
19 device which was a large -- a vehicle bomb that had been  
20 assembled in the back and he is seen doing that on tape.

21           And then you can see him from another camera angle  
22 go into the vehicle, get behind the wheel grinning from ear to  
23 ear to get ready to drive off and he gives a sign to the CHS  
24 and to the undercover in their vehicle and basically says ---  
25 which is praise God and off he goes to drive to the recruiting

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1 center with the SUV.

2 He is then observed on video by surveillance agents  
3 circling the building a number of times to determine -- and we  
4 found out later when he gave a statement to the police or to  
5 the law enforcement agents that he was circling the building a  
6 number of times to determine whether or not there were police  
7 in the area.

8 He then parked the vehicle with the bomb in front of  
9 the recruitment center right in front of the building, got into  
10 the vehicle being driven by the informant and they went off to  
11 a pre-determined area where they were going to have the ability  
12 to see what was happening and there they waited for a call from  
13 the undercover agent saying that -- confirming that there were  
14 in fact soldiers in the building.

15 And I think that there was some -- you can --  
16 something with respect to the number of individuals that were  
17 there, it was either 6 or 7. You can see the defendant on the  
18 video tape get the call from the UC and then he has the  
19 detonation cell phone in his hand and you see him making the --  
20 looking at a piece of paper with a phone number and making the  
21 call.

22 He had to make the first call according to what  
23 everybody agreed, it was essentially to trip the -- it was an  
24 additional call for safety and then, it was a call -- the  
25 second call was to actually detonate the device. And he makes

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1 a number of calls and then realizes that nothing has happened,  
2 at which point he is telling the confidential informant, we  
3 need to get out of here, because at that point he obviously  
4 realized that something was amiss and that was when he was  
5 placed under arrest.

6           While the defendant was waiting -- and the CHS were  
7 waiting in the public parking lot before meeting with the UC,  
8 the defendant have the CHS film him on a camcorder that they  
9 were going to use to film the bombing and he started making a  
10 statement on that to the camera basically saying, "We are one  
11 of those who wage war with Islam. We are not criminals. We  
12 are Mujahideen, until you stop waging war against the dean of  
13 Allah, we will always continue to fight against you. There will  
14 be no peace for the oppressors, you will feel our bullets."

15           Your Honor, after the defendant was arrested,  
16 shortly within an hour or so after his arrest when he came back  
17 to be processed at the FBI, prior to coming to Court, he  
18 provided a statement which I will give -- I have a copy of that  
19 for Mr. Balter, we were able to complete -- the agents were  
20 able to complete a 302 with respect to that.

21           In that statement, Your Honor, he was advised of his  
22 rights. He was very calm and essentially went on to admit to  
23 all of the things that he had done. He said he was aware of  
24 the explosives that were in the back of the SUV. He described  
25 them in detail and obviously we have him on videotape

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1 inspecting those explosives as well as arming the device. He  
2 talked about the fact that he parked the SUV in front of the  
3 building because he believed that that is where the soldiers  
4 were and he thought that the explosion would -- parking the car  
5 there would give the maximum benefit to the nature of the  
6 explosions and actually killing the soldiers inside.

7           He acknowledged that he was driving around the  
8 center and he said he did that because he was looking for  
9 police. He said he went through with the attack because he was  
10 doing it for the right cause. He admitted activating the  
11 device. He said it was his idea all along from as far back as 2  
12 to 3 months before he even met the confidential informant to  
13 attack this particular recruiting station.

14           He said, "The attack was not about making a  
15 statement, it was about making an effort to fight in the cause  
16 of Allah." He said that nobody had influenced him about Jihad  
17 or suggested that that was -- that that affected him in  
18 deciding that that was something that he wanted to do. He said  
19 he had been listening to many online scholars including Anwar  
20 Allalocki\* which we have mentioned in the affidavit.

21           He said that those scholars were talking about the  
22 duty to wage Jihad, which he defined as a Holy War, essentially  
23 he said he wanted to be a Mujahideen, which in his mind was a  
24 holy warrior. He said that local Imams, here in Baltimore had  
25 tried to talk him out of Jihad, that they said this was the



1 time for peace and for Dahla which is the word for  
2 proselytization. But he came to his own mind and in his own  
3 mind that this was the appropriate thing to do. He was  
4 passionate about an armed struggle in the path of Allah which  
5 is how he defined what Jihad was.

6 He said he was always suspicious that this might  
7 have been a set up with respect to the ultimate, what happened  
8 with the undercover officer but when he got into the SUV and he  
9 smelled the fumes, he thought, you know, maybe this is in fact  
10 real. And he very matter of factly told the agents who  
11 interviewed him, "I always figured there were two possible  
12 outcomes. Either I was going to get locked up or I was going to  
13 succeed."

14 And he said that "It would be easy for him to have  
15 gone to a Wal-Mart and to have gotten a gun but he decided that  
16 this was the way to proceed." And he admitted to -- all of the  
17 events leading up to that day on December 8, as well as what  
18 happened that day. Your Honor, we also were able to obtain and  
19 I think I do have a copy here for Mr. Balter, again these are  
20 material that are subsequently going to be turned over in  
21 discovery but sicne I am referring to it today, I wanted to be  
22 sure that Mr. Balter had a copy.

23 We were able to retrieve -- the agents were able to  
24 retrieve a notebook that was contained amongst a number of  
25 personal articles that Mr. Martinez, the defendant had been

1 keeping at his father in law's residence. These were obtained  
2 via consent. In the notebook and I copied all the pages that  
3 we were able to get, the first article is dated spring May 5,  
4 2009.

5           And in this -- what appears to be Mr. Martinez,  
6 writings -- various writings, he talks about what it really  
7 means to be a Samurai and how it is respectable to swear  
8 loyalty to your sword and master and give your life to defend  
9 his honor. It is the Samurai way. The ability to live through  
10 death is also part of the way.

11           He talks about a great Samurai warrior, who's name  
12 remains -- known all around the world from the islands of Japan  
13 to the streets of America. "Even though the warrior is gone,  
14 his spirit lives on through the sword. Oh, how I wish for the  
15 same fate. To be remembered forever as a fearless warrior  
16 whose name lives on for centuries. A warrior's death is what I  
17 am in pursuit of and a warrior's life I want to live. But I  
18 have much to learn of this road but I am willing to endure a  
19 warrior's life."

20           There are a couple of other statements. There are  
21 many biblical quotes. He talks about mastering your weapons  
22 and comprehending the advantages of weapons. And on one  
23 particular page, he talks about insurgent tactics, it is  
24 misspelled. And it has here "IEDs could be in dead animals,  
25 cardboard box that won't blow in wind. Barrel on a funny angle

1 and abandoned cars parked in odd areas. Where" -- it says  
2 "Were" , it appears to be misspelled. "Were no uniforms,  
3 operate from home, no type of communication that can be tracked  
4 and no rank structure."

5 So this is an individual, Your Honor, who back in  
6 way before ever having met or talked to the confidential source  
7 about Jihad and being a warrior, had already had thoughts about  
8 doing violent acts. And if you look at the video tapes of him  
9 on camera, arming this device, it is like doing an everyday  
10 task like making a meal, going to work, there is no indication  
11 of any remorse, concern, any nervousness that he is about to go  
12 and kill people with an incredibly powerful -- what he believes  
13 to be, an incredibly powerful vehicle bomb.

14 Under these circumstances, Your Honor, I don't think  
15 that there is an combination of conditions that can ensure that  
16 the -- first of all and foremost -- the danger, the protection  
17 of the community and the flight risk that is involved here  
18 given that the defendant is looking at a 20 year maximum  
19 penalty for the attempted murder and a life penalty for use of  
20 a -- attempted use of weapon of mass destruction.

21 His guideline level, Your Honor, is probably going  
22 to be at 360 to life. He is looking at a very, very long  
23 sentence. This is a case that under the Bail Reform Act, that  
24 is entitled to the presumption and it is incumbent upon the  
25 defense to be able to rebut that presumption, Your Honor. I

1 don't think, given the lack of ties to the community, they are  
2 very tenuous ties, the defendant has no real residence. He has  
3 been for the last three weeks or so he has been staying on and  
4 off with his mother.

5           He has a very strained relationship with her and  
6 that is actually very clear in some of the recorded  
7 conversations where he talks to the CHS about the fact that his  
8 mother did not approve of his activities and didn't really know  
9 a lot of what was going on and the same can be said about his  
10 father in law, which whom he was also staying on and off but  
11 also with whom he has not provided information -- specific  
12 information to him about the activities that were taking place  
13 and who he was actually associating with and what his plans  
14 were.

15           As far as his jobs are concerned, Your Honor, he has  
16 worked on and off at a couple of places. The last employment  
17 that he told the CHS was that he was working under the table  
18 for some construction -- doing some construction and odds and  
19 ends. But he also made it very clear to both the CHS and the  
20 undercover in a recorded conversation which I think is also  
21 referenced in the complaint. That he wasn't holding regular  
22 jobs because he felt the tax revenues were going to pay for the  
23 military and he believed that the military was at war --  
24 America and the military were at war with Islam and that was  
25 why they were legitimate targets for his violent acts.

1 Under all of these circumstances, Your Honor, the  
2 Government requests that the defendant be detained pending  
3 trial.

4 THE COURT: All right. Thank you very much. Yes,  
5 Mr. Balter, I know you appreciate and given the seriousness of  
6 the charge and the considerable evidence that has been  
7 collected, not withstanding your arguments about entrapment,  
8 that it is a difficult burden for you.

9 MR. BALTER: Your Honor, we certainly understand  
10 that and we understand the concern that the community has  
11 about these type of acts. We are also mindful of the fact that  
12 the circumstances in which this investigation took place, pose  
13 very very serious questions about what the Government's role  
14 was in provoking action which under other circumstances  
15 certainly would have been very, very serious but which in this  
16 particular case were purely the design of the Government.

17 If you go through this entire complaint, you will  
18 see other than the chatter about the use of the -- there is  
19 chatter about firearms, there was chatter about the use of  
20 possible bombs. There was chatter about something called  
21 "bottled cocktails --- type of devices" there was chatter about  
22 at least three individuals supposedly that Mr. Hussain would be  
23 reaching out to to try to enlist other individuals to be able  
24 to participate in a plan.

25 There was chatter about the fact that there was

1 money to be gathered to carry out this plan. There was  
2 nothing, there was nothing produced which showed that Mr.  
3 Hussain had any ability whatsoever to carry out any plan. All  
4 of this was -- all of this activity was the purely the creation  
5 of the Government.

6 And we submit it was a creation that was implanted  
7 in Mr. Hussain's mind. Now I understand the Court takes the  
8 position that there is a lot of evidence here of his  
9 participation in the final acts, which Ms. Manuelian went to  
10 great lengths to describe about what happened on December 8th.  
11 But I think that the Court must be conscious of the fact that  
12 in essence, despite the Government's close investigation of  
13 this and control over every aspect of, there were many recorded  
14 conversations after the initial information was apparently  
15 gathered by the informant, there were a series of recorded  
16 conversations.

17 Quite conspicuously the Government chose not to  
18 record the most important conversations. It was clear that the  
19 informant had come to the Government with evidence of the  
20 Facebook listings at the initial part of this investigation and  
21 I submit that there was nothing specific, nothing that would  
22 justify the Government in taking any specific action with  
23 regard to any criminal wrongdoing in those two initial Facebook  
24 postings.

25 And I would submit that the rest of the postings are

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1 vague at best themselves. But after knowing that there was at  
2 least concern by the informant, they apparently enlisted the  
3 informant to go out, have further conversations with Mr.  
4 Hussain in which quite frankly the most important information  
5 in this case was supposedly gathered, which one can only infer  
6 the Government made the intentional decision that they would  
7 not be recorded.

8           And one can only infer what that does as we see in  
9 this affidavit, as it allows quite frankly the Government to  
10 totally control the narrative. Everything we know about what  
11 happened in those conversations is distilled through the view  
12 of the Government which is clearly not a disinterested party in  
13 this entire investigation.

14           Similarly with regard to the statements that were  
15 made by Mr. Hussein, --- again, while I -- while the Government  
16 did give me a brief synopsis of some of the statements which  
17 were allegedly made, I have given a FBI 302, a five pages of  
18 which I have not had the opportunity to review, but I do know  
19 what I believe is the most significant factor is once again,  
20 the Government shows not to apparently make a verbatim  
21 recording.

22           What we have here is a narrative, controlled  
23 exclusively by the FBI as to what was said by Mr. Hussain.  
24 Clearly the FBI has access to recording equipment that they  
25 used in the course of this very investigation. But once again,

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1 among the most important statements, statements by Mr. Hussain,  
2 supposedly about the way in which what his whole history of  
3 activity was which was not recorded and which apparently the  
4 only record we will ever have is the recollections of the  
5 individual FBI agents.

6 And I submit, Your Honor, it is not dispositive, I  
7 understand that. But in terms of this Court's determination as  
8 to whether or not Mr. Hussain is a threat at this particular  
9 time, the Government has to take into account the weight of the  
10 Government's evidence, the Court has to take into account the  
11 way in which this investigation was taken. The clear -- there  
12 could be no dispute about the fact that Mr. Hussain himself was  
13 incapable of conducting any part of this part.

14 He didn't obtain any firearms, he has no indication  
15 that he ever possessed a weapon. There is no indication that he  
16 has ever collected any money. Every person he sought out to  
17 help simply blew him off immediately. In fact, if we were to  
18 believe what happened here, when they were getting ready for  
19 the events of December 8, he didn't even know how to drive a  
20 car.

21 They had to practice in a parking lot, him driving a  
22 car so that the FBI plan of him driving a car from one point to  
23 another to locate this -- near this installation could take  
24 place. This is a cookie cutter arrangement that the FBI uses.  
25 If you review the reports out of the Portland case, which is



1 similar to this, what they do is they design a plan in which  
2 they put a bomb, a fake bomb into a vehicle. They tell the  
3 individual who --

4 MS. MANUELIAN: Your Honor, I am sorry, I have to  
5 object to Mr. Balter going on about what happened in the  
6 Portland case of which I don't know the details myself and and  
7 the relevance of what that has to do with the rebuttable  
8 presumption. So I would object.

9 THE COURT: I am allowing both of you to give me  
10 probably more information than is required at this point. I  
11 understand why you are saying he is trying to undermine the  
12 validity of the credibility that this man was doing, rather it  
13 was the Government that has this cookie cutter approach to try  
14 to entrap people or try to attract people. I understood that  
15 and I do appreciate it and I am overruling your objection.  
16 What else do you want -- and I understand that, Mr. Balter.

17 MR. BALTER: That is exactly my point, Your Honor.  
18 And if in fact -- if in fact, there was that inducement made by  
19 the Government that it is clear that the issue -- that every  
20 point along the way of this case is what the pre-disposition  
21 was. And that is why I am so vehement in my opposition to what  
22 the Government has brought forward here, is they have deprived  
23 this defendant of the most compelling evidence as to whether he  
24 did or did not have a pre-disposition at the beginning of his  
25 case where there were 3 unrecorded conversations after the

1 informant clearly was working for the Government and at the end  
2 of their investigation, after the arrest is made, there is a  
3 post arrest interrogation and again, a conscious effort to  
4 avoid making a verbatim record as to what it was that  
5 Mr. Hussain was about to say about his involvement.

6           And for all those reasons, Your Honor, I think that  
7 this Court must look at this very carefully and should come to  
8 the conclusion that the Government in the first instances of  
9 establishing by clear and convincing evidence that this  
10 defendant is a danger. That has not been done. So we don't  
11 even get to the whether or not the presumption is rebutted.  
12 They haven't done that by clear and convincing evidence in the  
13 first instance. Nor have they made out a flight threat. For  
14 those reasons, I think that this Court should be devising  
15 conditions of release.

16           THE COURT: Okay, so let me just make sure I  
17 understand. I am looking on page 3 again of the affidavit.  
18 And we have the October 22 conversation which was the first --  
19 no October 29 is the first conversation which was recorded and  
20 you say there was the October 22 and then it --

21           MR. BALTER: 25 and 28.

22           THE COURT: 25 and 28.

23           MR. BALTER: Those are both at the top of page 4.

24           THE COURT: You are not counting the -- Facebook  
25 conversation -- communications?

1 MR. BALTER: Well, Your Honor, again I don't know  
2 what one incurs from the Facebook conversations. There  
3 apparently were communications that were made, but again these  
4 were the highly generalized nature. And the Government makes  
5 a tremendous amount and apparently understands -- pretends to  
6 understand much of what these -- many of these Arabic terms  
7 means, but with regard to any conversations with -- about  
8 specific planning, that again -- again that started supposedly  
9 on October 22nd.

10 That is when it says, "The CHS" -- it says "Martinez  
11 approached the CHS about attacking the Army Recruiting Centers  
12 or doing anything militarily." Now that again is unrecorded.  
13 There is no way for the defense to be able to glean from this  
14 whether or not there was coercion involved in those statements.  
15 Whether or not there were any type of promises, any type of --  
16 whether or not there was any type of conjoling.

17 Further, we don't know what the motive of the  
18 informant was. We don't know if this informant was working off  
19 charges, we don't know if this informant had a serious felony  
20 record. We don't know if this informant had immigration  
21 problems. We don't know enough about the circumstances to know  
22 how desperate that informant might have been to turn this  
23 investigation into something that it simply was not.

24 We are dealing with a young man here, a 21 year old  
25 man who may have had strong beliefs, who may have had strong

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1 passions about his religion, may have looked at things in a way  
2 that the rest of us might not. But to the extent that there  
3 was a Government informant who was not only taking advantage of  
4 his susceptibility but using his position to exert influence  
5 and turn this into something it originally was not and to take  
6 a person who did not have a pre-disposition to commit these  
7 acts into something other than that is very serious.

8 And the Government has conducted this investigation  
9 in such a way that we don't know.

10 MS. MANUELIAN: Your Honor, if I may. We do know.  
11 And we do know from the myriad of recordings that were made in  
12 which the defendant is not saying, "You are talking me into  
13 this, I don't want to do it." He is telling the informant, this  
14 is what I want to do, this is how we should instill fear and  
15 this is why military are the appropriate targets. They need to  
16 know that if you join the military, you will be killed. One  
17 has to fight against those who fight against you.

18 And that is the first recorded conversation in which  
19 he is going on and on of his own accord to the CHS talking  
20 about the things he wants to do and he is the one who actually  
21 makes the first reference to a car bomb, and I think we have  
22 shown that quote on page 5. Where Martinez said, "He thought  
23 they could use a propane tank for the operation but they would  
24 have to learn how to rig it." And then he goes on to say,  
25 "Like I wish I knew how to make a car bomb."

1           This is somebody actually thinking through the  
2 various ways in which he can carry out this attack. Either by  
3 getting a gun and shooting people in the face or blowing up  
4 cars or even later he talks about the fact that he knows how to  
5 make cocktail bombs or homemade bombs that can be used that  
6 they could throw into the building to disorient people and then  
7 shoot everybody as they are coming out.

8           Mr. Balter is trying to focus on the few instances  
9 at the beginning where we have some unreported contacts to try  
10 and ignore the incredible weight of the evidence of all of the  
11 defendant's own personal statements in which he is going on  
12 about the fact that this is what he wants and this is how he  
13 wants to go about doing it, Your Honor.

14           So, Your Honor, at this point in time, the defense  
15 has not rebutted the presumption that the defendant was a  
16 danger to the community. And the Court cannot ignore, also, I  
17 think all of the Facebook postings that we put on page 10, in  
18 which in between the various meetings that are occurring, the  
19 defendant is talking about praising Anwar Allalocki, saying he  
20 doesn't care if he is a terrorist, talking about the fight in  
21 the name of Allah.

22           And posting videos of Mujahideen attacking western  
23 coalition forces and showing his support for those. That one  
24 occurred on the 7th. Those are clear indications -- indicators  
25 of the defendant's mind set, Your Honor. So the Court has to

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1 look at the entirety of the evidence and the overwhelming  
2 weight of it is not the couple of conversations that occurred  
3 early on in this case, it is what happened afterwards when the  
4 defendant came up with the idea and the means to do it and  
5 pursued it ultimately with the undercover agent and then  
6 engaged in the acts, despite the fact that he was given  
7 repeated opportunities every single meeting with the undercover  
8 to back out and he chose not to.

9 THE COURT: Yes?

10 MR. BALTER: Your Honor, I just think it is very  
11 interesting that the Government hasn't taken the opportunity in  
12 any way to vouch for the informant.

13 THE COURT: Could I have counsel come up to the  
14 bench for a minute, please.

15 (Whereupon, a bench conference follows.)

16 THE COURT: I just have two things. One it is  
17 unusual not to have some information about the informant. And  
18 that is something that I would be interesting to see. And  
19 secondly, the issue of the -- I wanted to make sure that I  
20 understood correctly, that the confession statements were not  
21 recorded --

22 MS. MANUELIAN: They were not recorded.

23 THE COURT: Neither audio or video?

24 MS. MANUELIAN: Correct. Standard FBI practice,  
25 Your Honor.

1 THE COURT: That is not standard of other law  
2 enforcement.

3 MS. MANUELIAN: It depends on and off. FBI has  
4 never recorded -- usually doesn't record statements. I wasn't  
5 aware actually that a statement was taken until after the --  
6 after I came here to Court so.

7 THE COURT: Okay but --

8 MS. MANUELIAN: But Your Honor, I think --

9 MR. BALTER: Your Honor, the Government --  
10 Ms. Manuelian did contact me, she let me know that a statement  
11 had been taken and that a 302 was being made. So I have no  
12 complaint about Ms. Manuelian about her way that that was  
13 handled. I wanted to be clear --

14 THE COURT: No it is an interesting way to put it in  
15 terms of controlling the narrative. And I appreciate that  
16 argument but it is unlikely that I am going to be the one that  
17 is going to be making any decisions based on that. So -- all  
18 right, I just wanted to give you a heads up on that.

19 MS. MANUELIAN: Okay, did you want me to put that on  
20 the record?

21 THE COURT: I do indeed, thank you.

22 (Whereupon, the bench conference ends.)

23 THE COURT: Thank you very much counsel. At the  
24 bench, I indicated I wanted to give you a heads up on some  
25 information I am interested in. And Ms. Manuelian, I do find

1 it unusual ordinarily and I was not the judge to decide this  
2 criminal complaint, another judge did. And we often see --  
3 most frequently see some vouching for or reliability of an  
4 informant. So can you give me some of that information about  
5 this information.

6 MS. MANUELIAN: Certainly, Your Honor. I think one  
7 of the reasons that that was not put in there was because of  
8 the fact that we have so many recorded conversations with the  
9 defendant. However, I can tell the Court that the confidential  
10 informant in this case has not received any funds. He has no  
11 criminal record. He has only been recouped for some incidental  
12 expenses, specifically the fact that the cell phone as noted in  
13 the complaint, the cell phone was purchased for the defendant  
14 in this case.

15 That was one of the expenses that he received  
16 compensation for. Other than that, he has not received the  
17 money for this. He is a person who came forward because of  
18 concern about individuals in the community operating in the way  
19 that this defendant has and he has not received any  
20 compensation for this particular case.

21 THE COURT: And he is not a recorded or registered  
22 informant of any kind?

23 MS. MANUELIAN: He is with -- has worked with the  
24 FBI, Your Honor, for a very limited period of time prior to  
25 this case in a couple of other minor matters providing some



1 other information.

2 THE COURT: Okay.

3 MS. MANUELIAN: For which he received very minimal  
4 compensation. And again, some reimbursement for expenses but  
5 for this particular case, he has not received any compensation  
6 and has not been paid in connection with the activities that he  
7 undertook here, except for expenses that were incurred.

8 THE COURT: Okay. All right. Thank you very much.  
9 Anything further counsel?

10 MR. BALTER: Your Honor, again, I believe that this  
11 proffer about the informant has raised more questions than it  
12 has answered. One could readily infer that this informant is  
13 simply is combing through the mosques of Baltimore looking for  
14 young men who may be susceptible to being involved in this kind  
15 of activity. It is very serious, I think had there been what  
16 we suggested, a hearing to determine with greater specificity  
17 what happened in this particular case, and what the context of  
18 all of these conversations were, the defense would at least be  
19 at a position to be able to rebut this.

20 Again, I wish if the Government had conducted this  
21 investigation in the way that I submit, it might have done, the  
22 entire flavor of what the Court is considering at this point  
23 might have been totally different. At this point, our hands  
24 are tied simply because the Government didn't seek to do it  
25 that way.

1 THE COURT: The only other question I had was the  
2 three unrecorded conversations that proceeded the October 29,  
3 will those be turned over and if so, at what time to the  
4 defendants?

5 MS. MANUELIAN: I am sorry, Your Honor, the three?

6 THE COURT: There are three unrecorded -- the point  
7 that Mr. Balter is making that there were -- October 22, 25 and  
8 28 were not recorded.

9 MS. MANUELIAN: Yes, Your Honor.

10 THE COURT: Will the substance of those  
11 conversations be turned over to the defendants and if so when?

12 MS. MANUELIAN: The substance of the conversations  
13 are essentially what is contained --

14 THE COURT: In the complaint?

15 MS. MANUELIAN: -- in the complaint Your Honor,  
16 there are a few other notes but other than that, the substance  
17 is essentially what is in here and if there are -- at the time  
18 that if the CHS is going to be going forward for a trial,  
19 obviously the --- will be provided as part of the Jenks Factor.

20 THE COURT: The Jenks -- so there is -- there are  
21 some additional notes but that -- that is it?

22 MS. MANUELIAN: Correct, Your Honor.

23 THE COURT: Okay. All right. Thank you very much.

24 (Pause.)

25 THE COURT: All right, will you please stand

1 Mr. Muhammad -- excuse me, Mr. Hussain, Muhammad Hussain would  
2 you please stand. You are at issue here today as whether you  
3 should be detained pre-trial. I am finding based on the  
4 hearing and what was presented that you should be detained pre-  
5 trial. As indicated by the prosecutor, there is a presumption  
6 in this case because of the nature of the charge.

7           Extraordinarily serious charges. That means you are  
8 to be detained unless you can prove -- overcome that  
9 presumption and I don't believe you have overcome that  
10 presumption. First of all, if you are being detained because  
11 of danger to the community, there is a clear and convincing  
12 standard that the Government has to prove. However, if it is  
13 just for risk of flight, it is a preponderance of the evidence.

14           Preponderance of the evidence means 51/49 percent,  
15 just a slight chance over 50/50 that you would not return. I  
16 think actually in all likely -- both of them have been met but  
17 particularly clear is the preponderance of the evidence. Given  
18 the seriousness of the charge, the erratic and irrational  
19 behavior and the dangerous behavior that is alleged suggests  
20 that you might not return if you were released.

21           Also the seriousness of the allegations regarding  
22 what you said and what you prepared to do and did do. All  
23 indicate that you would be a danger to the community. The  
24 Court looks at several factors in making the decision. One is  
25 the nature of the charge and I have already talked about the

1 seriousness of those charges.

2           Second, the weight of the evidence. While Mr.  
3 Balter may say a very vigorous argument regarding entrapment  
4 and I know he will continue to develop this during his defense  
5 of you, that really is an issue for another day. Primarily  
6 because of the strong evidence after late October in terms of  
7 going forward and going through with the alleged activity.

8           Second paragraph 35 indicates and I know this is  
9 simply a statement under oath, but you indicate, it has been  
10 said that you indicated it was your idea and you came to the  
11 brother, I think it was with this idea. The recorded  
12 statements or the statements on Facebook and the statements in  
13 the notebook that have been referred to today, do not  
14 necessarily indicate in and of themselves any criminal activity  
15 in holding those beliefs or making those statements, but it  
16 does appear -- it is consistent at least with someone who might  
17 take those statements, given the depth and the feeling and the  
18 belief.

19           So those two both the new statements that are  
20 brought in terms of the notebook and the fact that there were  
21 statements on Facebook indicating a very deep desire, and even  
22 to wage Jihad and the hatred of certain people in the United  
23 States. So other issues really are less important. The  
24 important thing here is the weight of the evidence and the  
25 nature of the charges and those -- for those reasons, I am

1 going to detain you pre-trial.

2 We have only a -- we only proceed at this point on  
3 criminal complaint which is a statement that another judge of  
4 this Court found was probable cause for these charges but we  
5 all go next to an indictment. So we need to set a preliminary  
6 hearing date with the indictment is not brought in?

7 MS. MANUELIAN: Yes, Your Honor. I think the date  
8 is December 21, we anticipate that we will have a indictment on  
9 or before that date.

10 THE COURT: So that is the date of the preliminary  
11 hearing? As Mr. Balter will discuss with you, Mr. Hussain, you  
12 have the right to ask for a preliminary hearing which means the  
13 Government has to prove -- put on more of its evidence in the  
14 case. If you are -- if an indictment is not returned before  
15 that time. That is, if a Grand Jury is not presented this  
16 evidence and then charges you under that form of an indictment.

17 So we are going to set the preliminary hearing date  
18 for December 21, it is rather unusual for us to have a  
19 preliminary hearing date but you have the right to have that  
20 usually an indictment is returned before that date. All right.

21 MS. MANUELIAN: Your Honor, could we just set that  
22 in as a matter of formality for the afternoon of the 21st and I  
23 will contact Mr. Balter and the Court.

24 THE COURT: Yes, we will set that in for noon on  
25 December 21. Is there anything further that we need to do

1 today?

2 MS. MANUELIAN: No, Your Honor. I may, depending on  
3 timing of the Grand Jury, it would be helpful if we could just  
4 set it for 2:00 p.m, if there is no objection? That would make  
5 it easier for me to be able to communicate what is going on.

6 THE COURT: Okay, let's just make sure that we don't  
7 have anything scheduled that day yet. Do you have that in  
8 front of you, Ms. Smith?

9 THE CLERK: Yes, I do, Your Honor.

10 THE COURT: Is 2:00 free?

11 THE CLERK: Yes, it is.

12 THE COURT: Okay, all right. Thank you very much. I  
13 will remain here for the next case.

14 MR. BALTER: Thank you, Your Honor.

15 MS. MANUELIAN: Thank you, Your Honor.

16 (Whereupon, the hearing concluded.)  
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C E R T I F I C A T E

I certify that the foregoing is a correct  
transcript from electronic sound recording of the proceedings  
in the above-entitled matter.

\_\_\_\_\_/s/ 2/15/2011  
Lisa Contreras Date  
Certified Transcriber  
Cert. No.\*\*D-474